

STATE OF IOWA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact Finding

between

CITY OF IOWA CITY and
IOWA CITY LIBRARY BOARD
OF TRUSTEES

and

THE AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL #183,
AFL-CIO

Before

Harvey A. Nathan

Fact Finder

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PUBLIC EMPLOYMENT
RELATIONS BOARD

Hearing Held: February 18, 2003

For the City: Steven B. Rynecki
Von Briesen & Roper,
Attorneys

For the Union: Ty Cutkomp
AFSCME Council 61
Union Representative

FACT FINDER'S

REPORT AND RECOMMENDATIONS

I. INTRODUCTION

This is a fact finding proceeding held pursuant to Section 21 of the Public Employment Relations Act, Chapter 20 of the Iowa Code. Iowa City is located in east/central Iowa and has an approximate population of 62,000 people. It is considered one of Iowa's larger cities and is significant as the home of Iowa's premier university. For the purposes of this Report the City and the Library Board will be referred to jointly as the "Employer."

The Union represents a wall-to-wall bargaining unit, described in the Recognition article of the expiring contract as consisting of all employees of the Employer other than fire fighters, police officers, supervisors, "confidential and temporary employees and others" excluded by the statute (Chapter 20 of the Iowa Code). Historically the parties have used to exclusion of "temporary" employees to also exclude certain part time, "casual," and "seasonal" employees. Temporary employees are defined as "those who regularly work less than twenty (20) hours per week, regardless of length of employment; or those who work in a position which is authorized for less than nine (9) months."¹

The composition of the unit been stable since its initial certification in 1976 except that in 2001 the Employer successfully petitioned PERB to remove a number of persons, deemed exempt, from the unit.

¹ The same provision (Article 7, Section 1) also states as follows: When a temporary employee serves greater than nine (9) months averaging twenty (20) or more hours per week, the parties shall meet and confer as to the status of such employee; provided, however, such employee shall accrue sick leave, holiday and vacation time (prorated if part time) and shall accrue seniority for purposes of bidding ***."

There are six issues. They may be diagramed as follows: ²

<u>Present Provision</u>	<u>Union Proposal</u>	<u>Employer Proposal</u>
1. <u>Wages</u> - There are 15 pay grades, each with 6 steps. Paygrade 1 ranges from \$11.41 to \$14.55 Paygrade 15 ranges from \$19.00 to \$23.91	1. <u>Wages</u> - 4% across-the-board.	1. <u>Wages</u> - 2% across-the-board. (The Employer indicated that in subsequent bargaining after these proposals were exchanged it had offered 3%.)
2. <u>Insurance</u> - All employees in the Blue Cross/Blue Shield Iowa 500 Plan. Family coverage co-payment \$20.00 per month.	2. <u>Insurance</u> - Maintain current provision.	2. <u>Insurance</u> - Employees pay 50% of premium increases. (The Employer indicated that in subsequent bargaining after proposals were exchanged it offered increase of \$20.00 to \$40.00 co-pay for family coverage premiums.)
3. <u>Article 7 - Hours of Work - Category Definitions and eligibility for benefits:</u> Temporary employees, as defined to include certain part time employees, casual and seasonal employees, as defined have wages and fringe benefits at lower rates than "permanent" employees	3. <u>Article 7 - Categories:</u> Only excluded categories are those delineated in the statute. All others shall get wages and benefits (prorated) as regular, full-time employees.	3. <u>Article 7 - Categories:</u> Maintain present provisions
4. <u>Sick Leave</u> <u>Sick Leave Bank:</u> (a) All days used from bank must be repaid. (b) Each employee may use 10 days from bank during life of contract.	4. <u>Sick Leave</u> <u>Sick Leave Bank:</u> (a) No repayment of days. (b) No limit on days which may be borrowed.	4. <u>Sick Leave</u> <u>Sick Leave Bank:</u> Maintain present provisions
<u>Use of Sick Leave</u> May be used on an hour-to-hour basis for doctor's appointments or other health maintenance needs.	<u>Use of Sick Leave</u> Maintain present provisions.	<u>Use of Sick Leave</u> Sick leave may be used on an hour-to-hour basis for doctor's appointments of the employee. Employees will attempt to schedule such appointments during non-working hours.

² The parties have agreed to carry over all other issues for an additional year.

5. Representation: Stewards get 2 hours off per week to work on grievance resolution.

5. Representation: Stewards get reasonable time to work on grievance resolution.

5. Representation:
Maintain present provisions

6. Holidays: Permanent employees working on holidays get 12 hours of credit. Pro rata for part-time employees.

6. Holidays:
Maintain present provisions.

6. Holidays: Permanent employees working on holidays get holiday credit equal to 1-1/2 times the number of hours actually worked.

II. FINANCES

The Employer is not making an "inability to pay" argument as that concept is generally understood in impasse proceedings. It is therefore acknowledging that it can pay what the Union is seeking. It maintains, however, that such increases would create a disproportionate impact on limited resources and that the Union's proposals are otherwise inappropriate under the standards set forth in the Public Employment Relations Act.³

³ Section 20.22(9) of the Iowa Code provides that neutrals shall consider, among other relevant things:

(a) Past collective bargaining contracts between the parties including bargaining that led up to such contracts.

(b) Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved.

(c) The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effects of such adjustments on the normal standards of service.

(d) The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

III. COMPARABILITY

The parties traditionally have used the ten largest Iowa cities as a comparability group. The Employer also refers to Cedar Falls because it is a university community of reasonable size and has been cited in the past. The Union refers to Johnson County, the county in which Iowa City is located. The Employer objects to the reference to Johnson County. I find that the ten largest cities are an appropriate comparability group, as well as Cedar Falls and Johnson County. My reasons are as follows: Cedar Falls has been used in the past. It is similar to Iowa City in that it is greatly influenced by its university and the cheap labor available from university students. Additionally, the difference between Cedar Falls and Iowa City in terms of size and environment is a lot less than Iowa City and Des Moines which is more than three times the size of Iowa City and is the state capital. Johnson City is relevant because of location, the financial impact the County and the City have upon each other, and because the parties have relied upon it in the past.⁴ The comparability group may be listed as follows:

Des Moines	198,682	Iowa City	62,220
Cedar Rapids	120,758	Council Bluffs	58,268
Johnson County	111,006	Dubuque	57,686
Davenport	98,359	Ames	50,731
Sioux City	85,013	West Des Moines	46,403
Waterloo	68,747	Cedar Falls	36,145

⁴ In 1993 Arbitrator Peter Feuille referred to the Employer's citation of the statistics from several counties.

However, unlike comparability with other public sector impasse cases in Iowa, the situation here is unique because no comparable group has a single bargaining unit as extensive as in Iowa City. Several of the job categories contained in this bargaining unit are either unrepresented in the comparables or they are represented by several different labor organizations. Thus, Des Moines has eight bargaining units for the employees contained in Iowa City's one non-public safety unit. Sioux City and Cedar Rapids each have five different units. The library employees do not appear to be represented at all in Council Bluffs, Dubuque, Ames and West Des Moines.⁵ Reliance on external comparability must be tempered in this case by the realization that bargaining among other municipalities will be more focused along the special needs of the separate units.⁶

The Employer places great emphasis on comparing terms and conditions of employment for the bargaining unit employees here with other employees of the Employer. These include fire fighters represented by a fire fighters union, police represented by a police union and administrative and confidential employees who are unrepresented. Paragraph 20.22(9)(b) of the Iowa Code specifically refers to "other public employees doing comparable work, giving consideration to factors peculiar to the area and classification involved." The reasoning here is that employees in different occupations, particularly in public safety, have

⁵ No information is available for Cedar Falls. The fact finder assumes there are no library employees employed by Johnson County.

⁶ In all likelihood wall-to-wall bargaining benefits the Employer because its negotiations are organized and the large stakes favor a conservative approach.

different interests, distinctive terms and conditions of employment and sometimes special funding. Stated another way, the interests of fire fighters with their unique scheduling requirements, for example, are too far removed from clerical employees or bus drivers to make a meaningful comparison. More importantly, the terms and conditions of public safety employees will be greatly influenced by the agreements reached among their respective external comparables. It is simply insincere to suggest that the terms and conditions of employment for Iowa City's fire fighters are more strongly influenced by the what bus drivers in Iowa City are paid than by what fire fighters in other comparable cities enjoy.

The Employer cites a number of Wisconsin cases in support of its arguments for internal comparability. Iowa has a very different bargaining statute from Wisconsin and its public sector bargaining has had a very different history. The extent of organization is different in Wisconsin at the municipal level and this has created a much more defined need for coordination and uniformity among internal bargaining units. In a sense, the wall-to-wall unit in this case already gives the Employer the consistency among employees that it seeks. Finally, the settlements the Employer relies on were voluntarily reached. The settlements were not tested in the full light an impasse proceeding brings to the issues. That two public safety units with a combined representation less than one-third the size of the unit here have settled for what the Employer is offering on the economic issues is simply not persuasive in this case.⁷

⁷ While the fact finder is aware that there must be uniformity in health care plans for economic reasons, a distinction must be made between the terms of those plans and what the co-pay

V. FACT FINDING ISSUES

1. Wages

Both parties recognize that economic issues cannot be examined without awareness of the cost of the total package. The Union in particular has argued that the size of the wage increase must reflect what is also happening with employee contributions toward insurance costs. It refers to earlier impasse decisions where the neutral noted that health care co-pay must be balanced with wage increases. Likewise, the Employer points out that health care insurance is now so costly that it makes up a major part of employee compensation. Indeed monthly premiums today are not far different from the total wages many public employees received just a few years ago. Increases in health care costs today are greater than what total wage and benefit increases were not too many years ago.⁸ What all of this means is that no neutral can determine appropriate wage increases without factoring in insurance costs.

In this particular case there is an added component. The issue referred to by the parties as the definition of "temporary" employees is really an economic issue. The Union is seeking contract coverage for a portion of the bargaining unit which has previously been excluded. This translates into additional wage and benefit costs. Regardless of how the parties have

is from group to group. There is no more reason for bus drivers to make the same premium contributions toward their insurance as those of fire fighters than there is for librarians to be paid the wages of police officers.

⁸ For this reason the Union's argument that health insurance premiums rose 195% prior to Feuille's award in 1993 and that costs have only increased 51% since then is specious. Before Feuille family premiums went up by \$271.71. After Feuille premiums have gone up an additional \$384.99 (counting the increase scheduled for July 1, 2003). Obviously, percentages are useless here.

parties have packaged their proposals, wage increases for temporary employees has had a large impact on the fact finder's recommendations for wages and insurance. But for my support for the Union's request to tighten the definition of temporary employees the wage recommendation would have been different.

As the parties inflation as measured by the U.S. Department of Labor's Consumer Price Index has risen at almost record low rates. The Midwest urban consumer measurement is below 2% and was below 3% from July 2001 to July 2002. While the employees in this unit received 3.25% annual increases in 2001 and 2002 their theoretical cost of living was measurably lower. Thus, one consideration here is whether wages should be increased beyond 2% in the absence of evidence of an increase in productivity. On the other hand, it might be argued that the CPI should only be seen a broad generalization because it is a measurement relative only to itself. That is to say that specific percentage increases do not translate into the same percentage increases for individuals living in Iowa City (or anywhere else). Rather, the index shows inflation directions and the relative incline or decline of those directions. Certainly wage rates should not be in lockstep with increases in the CPI.

The data for settlements among the comparable employers is only marginally helpful. Many of the units have not reached agreement for 2003 and several of those which have settled did so last year or the year before when inflation was somewhat higher. All in all the pattern among the comparable units for wage rates for 2003 ranges from 2.5% to 4% with some exceptions at either end of the spectrum. Generally speaking there is nothing which stands out among the comparables regarding health care costs which would distinguish one

unit from another for the purposes of a non-pattern wage increase.⁹

Considering what information the fact finder has, and (1) noting that settlements for 2003 seem to be about what they were in the past few years, (2) that fire and police units in Iowa City have settled (or almost have settled) at or about 3%, (3) that the fact finder is recommending that insurance co-payments increase this coming year, (4) that the Employer is not making an inability to pay argument and (5) that there will be increased costs for the Employer from the new recommended coverage of additional employees previously considered "temporary," the fact finder recommends a 3% increase across the board.

2. Insurance

The parties have had a long and difficult history with health insurance. The Employer pays for single coverage, and that is not an issue. It pays all but \$20.00 per month for family coverage and seeks to increase that to \$40.00 per month. The Employer's argument, quite simply, is that health insurance costs are increasing at alarming rates and that employees must take some responsibility for these increases. As noted above, in the space of just a few years the costs of family coverage has increased by thousands of dollars a year, far beyond fiscal growth on the revenue side. This year the Employer has been paying \$689.73 per month for each family insured employee. On July 1, 2003, that rate will increase to \$796.52. It is

⁹ The fact finder notes however that copies of bargaining agreements for other units were not supplied so that the fact finder has no way of gauging what the comparable wage rates are generally. Without knowing what other cities pay for similar work it is difficult to find meaning in a 3% as opposed to a 3.5% increase.

asking that employees contribute an additional \$20.00 per month toward that \$106.79 increase. The Employer acknowledges that while most employers in the comparability group do not require employees to pay as much as \$40.00 per month for insurance, many of the plans in these other locations have higher deductibles or other restrictions. For example, the family deductible is \$100 in Iowa City. All other comparable cities other than Cedar Rapids require employees to pay more.¹⁰ The Employer also argues that all other Iowa City employees, organized or not, will be paying \$40.00 for family coverage next year.¹¹ The City argues that uniformity in insurance is critical in labor relations and was a key factor in Peter Feuille's arbitration award ten years ago when he awarded the initial \$20.00 per month premium co-pay.

The Union argues that the Employer's medical plan is self-funded and the Employer has some control over contribution levels. In point of fact, the Employer substantially underfunded the plan this past year, contributing substantially less than what the plan administrator recommended. Now the Employer is claiming need when its own failure to properly pay the proper amounts into the plan is the cause for the current increase. More

¹⁰ In Des Moines, for example, where employees do not contribute to the cost of insurance, the deductible is \$100 per person. A family of five would pay as much as \$500 a year in deductibles, which is more than the \$40.00 per month being requested of employees in Iowa City. In Cedar Rapids, where the family deductible is the same as in Iowa City, employees pay \$7.50 per month toward single coverage.

¹¹ The tentative agreement with the police union increases the family premium contribution rate from 4% to 5%, subject to a cap of \$35 a month for the first 6 months and a cap of \$40.00 for the second 6 months. The fire union tentative agreement increases monthly contribution from employees for family coverage to \$40.00 a month from \$20.00.

significantly, the Union argues, in the last negotiations the Employer used the anticipated increase in health insurance costs to obtain the Union's acceptance of lower wage increases. Having secured this concession from the Union, the Employer turned around and cut its contributions for insurance costs. The Employer could well do the same thing again this year. The \$796 premium is only a "suggestion" from the plan administrator. There is no commitment from the Employer that it will maintain the suggested level of contributions.

The Union further argues that when the Employer obtained the initial \$20.00 a month payment there was a *quid pro quo* of additional wage increases. According to the Union unless there is a corresponding wage increase, lower paid employees will be standing still financially this year. The Union also notes that Johnson County, which has the same plan as the Employer here, does not require employees to contribute toward premiums. Additionally, the parties have already negotiated benefit cuts from the plan itself in order to hold back the increase in premiums. The employees should not have to pay twice.

The problem with the Employer's proposed increase is not the principle but the idea that lower paying employees should have their contribution rates influenced by higher paid employees. The City relies heavily on the tentative agreements with the police and fire units and the \$40 monthly payment mandated for the unrepresented confidential and administrative employees. But these employees are in a better position to absorb the premium increases than custodians and clerks.¹² On the other hand, the parties have not suggested a

¹² \$20 a month is \$.115 an hour. For an employee earning \$16.00 an hour, a 3% wage increase is \$.48. The increase in premium costs represents 25% of this employee's wage increase.

sliding scale and the fact finder will not recommend a new approach the parties themselves have not broached.

But the underlying need is there. Regardless of whether the Employer paid sufficiently for premiums last year, it is a "pay me now or pay me later" proposition. Increases are inevitable unless the parties want to revisit the benefit structure or create premium categories such a husband and wife only or single parent with dependents. However the plan is tweaked the basic question is whether employees will pay part of the costs. Once that is decided, as it was here ten years ago, increases in contributions are simply dollars moved around the table to create a total package.

An argument can be made that the 3% wage increase is relatively marginal and therefore there can be no justification for an increase in insurance contributions. The fact finder's most significant consideration here is the increase in costs to the Employer arising out of contract coverage for employees previously excluded as "temporary" employees. Collective bargaining means that the group operates as a whole and some settlement provisions are more beneficial for some employees than for others. As a result of the fact finder's recommendations in this Report more employees will be served by the contract. This overall improvement for the bargaining unit comes with a price. The Employer should be allowed some offset in return for the increases in wages and benefits for a category of employees. The fact finder's recommendations therefore contemplate the recommended modest wage increase and, now, the increase in premiums.

The fact finder recommends an increase in family premium contributions to \$35.00

a month for the first six (6) months and \$40.00 for the second six (6) months of the one year term of the new agreement. The split is in line with the police settlement. While it is true that the police contract actually has a percentage formula and the \$35/\$40 is merely a cap, it is likewise true that most of the AFSCME bargaining unit does not have wage rates similar to that of police officers. Fairness dictates that clerks and custodians not be required to pay more than police officers for their family insurance coverage.

3. Temporary Employees

The Union proposes the following changes in the language of Article 7 - Hours of Work:

Section 1 - Definitions

~~Temporary Employees - Those who regularly work less than twenty (20) hours per week, regardless of length of employment, or those who work in a position which is authorized for less than nine (9) months. When a temporary employee serves greater than nine (9) months averaging twenty (20) or more hours per week, the parties shall meet and confer as to the status were appropriate for such employee, provided, however, such employee shall accrue sick leave, holiday and vacation time (prorated if part time) and shall accrue seniority for purposes of bidding pursuant to Section 4B of this Article. The parties may agree to waive the nine month provision in cases involving specially funded employees. Waiver of such requirement will not be unreasonably withheld. The City and the Union shall comply with Chapter 20, Iowa Code, in the use of temporary employees.~~

~~Casual Employees - Persons employed for brief, irregular periods or those who perform work on a periodic basis. The City and the Union shall comply with Chapter 20, Iowa Code, in the use of casual employees.~~

~~Seasonal Employees - Those who work in positions which relate to regular periodic weather or climate conditions, or who work in positions which relate to phases of the school year. The City and the Union shall comply with Chapter 20, Iowa Code, in the use of seasonal employees.~~

Permanent Employees - Persons who are appointed to authorized budget positions and who have completed a probationary period upon initial employment with the City.

Full-time Those who regularly work forty (40) hours a week.

Part-time Those who are assigned to work less than a forty hour week; generally the Assignment will be based on ten (10) hours-per-week increments.

The City shall provide the Union a list of names of temporary, seasonal, and casual employees of the city, along with hire dates, termination dates (if applicable), and account number of these employees. The Union will request this information under provision no more than three times annually.

Section 4 - Temporary and Part-Time Employees

A. Permanent part-time employees shall be assigned a regular number of hours per week for the purpose of determining the City's benefit contribution. Benefits to permanent part-time employees will be prorated on the number of hours to which the employee has been assigned pursuant to section 1 of this Article. Occasionally the hours actually worked will vary from the assigned number. No minimum amount of work is guaranteed to part-time employees. Any employees whose hours actually worked exceed his/her assigned hours shall be reassigned hours for the purpose of proration of benefits. An employee may request a redetermination of his/her assigned hours or proration of benefits through the grievance procedure. Nothing in this section shall require a permanent part-time employee to regularly work more than his/her assigned hours.

B. Temporary Employees. Temporary, seasonal, and casual employees are not entitled to sick leave, vacation, insurance benefits, seniority, holidays, use of the grievance procedure, or any other benefits provided under this agreement, except as provided in Section 1 of this Article while they are excluded pursuant to the conditions of Chapter 20, Iowa Code.

Temporary employees may compete for permanent openings with the employer. Their seniority shall be computed from their last date of hire. However, permanent employees, regardless of length of service, will be given seniority preference over temporary employees.

C. Special program employees include those funded by work study and similar programs. Such employees shall be considered as temporary employees, while they are excluded pursuant to conditions of Chapter 20, Iowa Code. ~~However, special program employees will receive benefits only for which the City is reimbursed and which are either agreed upon in writing at the time of employment or at a later date. Special program employees become eligible to bid upon permanent City positions only if and when their positions are partially or fully funded by the City. However, permanent employees, regardless of length of service, shall be given seniority preference over special program employees. The supervisor shall make a reasonable effort to notify bargaining unit employees of any known special needs or requirements of special program employees.~~

The premise of the Union's case to change this language is that the Employer has abused the exclusion for temporary, seasonal and casual employees and has, in effect, created a two-tier workforce. In addition to many students who work for the Employer and who are excluded from the unit by law (and are thus not at issue here), the Employer uses numerous employees who perform bargaining unit work side-by-side with regular employees but who receive reduced wages and no benefits. Some of these "temporary" employees have worked for the Employer for years. The gimmick, as the Union sees it, is that the collective bargaining agreement covers only those employees who occupy "authorized budgeted positions." By refusing to "budget" the specific jobs, although they exist and are filled, the Employer is able to maintain that the employees are not covered by the agreement. Of course these employees are paid out of the same budget; it is just their titles are not specifically provided for. There is no incentive for the Employer to "budget" these jobs, although they have existed for years, because to do so would require it to pay these employees contract rates and benefits.

The Union points to six "substitute" librarians. They perform the same work as regular librarians, have regular schedules, and an open-ended term of employment. The wages for these "temporary" positions range from \$13.00 to \$14.50 an hour compared with the contract rate of \$16.98 to \$21.31 an hour. From the Union's point of view, the Employer has simply avoided the need to budget positions which exist and are filled in order to avoid its obligations under the collective bargaining agreement. As the Union suggests, it is not that the Employer needs to have work performed for which there are no budget allocations, it is that it does not need to budget for these jobs as long as it can avoid its contractual commitments to pay them the negotiated rates. As the Union notes, it is not as if these workers are not being paid by the Employer. The revenue used to pay them is the same revenue used to pay regular employees. The payment simply comes from a different line item.

In 1991 this issue went to fact finding before William E. Spellman. The fact finder was critical of the Union's proposal because it was not costed and because he did not have enough facts to explore the full impact of suggested changes on other employees in the bargaining unit. He recommended that this subject could best be resolved at the bargaining table.¹³ The Union brought the subject to the bargaining table in 1999, 2001 and now in 2003. It suggests that the parties are either unwilling or unable to make the hard decisions necessary to resolve this issue. It therefore appeals to the fact finder.

¹³ "This is an area that could best be bargained in such a way to mutual advantage if the parties would in fact bargain." Spellman Report, p.6.

The Employer does not deny the facts. Rather, it points out, many of these jobs are of uncertain duration, that there is inadequate funding to make them permanent positions and that they are often filled by transient employees who leave after a short time. The Employer argues that if it were required to pay the contract rate for these workers jobs would have to be eliminated because there is not enough money in the budget to provide regular positions. The Employer also denies that the number of temporary employees has expanded by any measurable amount.

The Union's evidence shows that the library had 12.0 FTE temporary staff in 1994 and 1996, but 16.4 FTE in 2001 and 18.45 FTE in 2002. ¹⁴

While other municipalities exempt temporary employees the evidence indicates that no comparable city has applied the concept as broadly as in Iowa City. Some representative samples are as follows:¹⁵

¹⁴ The following employees work in "temporary" positions in the library:

Wortman	21+ yrs	Larsen-Dooley	6+ yrs	Devine	2 yrs
Marsden	19+ "	Moore	5 "		
Henderson	17+ "	Vallejos, V.	3+ "		
Patil	15+ "	Fering	3+ "		
Dralle	13 "	Partridge	2+ "		
Walters	10+ "	Knievel	2 "		
Greene	10+ "	O'Gorman	2 "		
Pepple	9 "	Taylor	2 "		

plus approx 18 others who have worked more than 9 months but less than 2 years.

¹⁵ These descriptions are taken from the Employer's exhibit.

Cedar Rapids	<u>AFSCME</u> : After four months a temporary employee shall be considered a regular employee subject to the approval of the City Council. If the City Council does not approve, the employee shall be terminated.
Council Bluffs	<u>AFSCME</u> : A part time employee is one hired to work between 4 and 12 months. <u>CWA</u> : A temporary employee is one whose position shall not exceed 12 months.
Davenport	<u>AFSCME</u> : Temporary employees are hired to perform specific tasks of a finite nature. After one year they get regular wages and benefits except promotion and layoff rights.
Des Moines	<u>CENTRAL IOWA PUBLIC EMPLOYEES ASSOC</u> : Temporary employees occupy a temporary or seasonal position. Certain temporary employees may work up to 7 months. <u>MUNICIPAL EMPLOYEES ASSOCIATION</u> : A temporary employee is one who occupies a temporary or seasonal position.
Dubuque	<u>GENERAL DRIVERS</u> : A temporary employee is one hired on a limited term basis for certain positions.
Sioux City	<u>AFSCME</u> : A temporary employee is one hired to work a limited period of time not to exceed 180 calendar days. There are limited exceptions.
Waterloo	<u>TEAMSTERS</u> : A budgeted position on a temporary basis may be filled not to exceed 6 months.

Thus, only in Iowa City can employees regularly work more than 12 months and never receive contractual wages and benefits. The Union also points out that the Employer can avoid some of the liability for regular contract wages and benefits by utilizing the large pool of students whose employment is excluded by statute.

Among the many problems with the language at issue is that it is so complex and overstated as to create ambiguities. The essence of the provision is that there are persons appointed to authorized and budgeted positions and then there is everyone else. The authorized and budgeted employees get the contractual wages and benefits and everyone else does not. This being the sense of the language the question arises as to the reason for the first sentence of Article 7, Section 1, which describes temporary employees as either (1) those working less than 20 hours a week or (2) those who work in a position which is authorized for less than 9 months. The implication is that in (1) employees who work at least 20 hours a week or (2) those who work more than 9 months are not temporary and therefore are covered by the recognition clause of the contract. While at first this seems to be reinforced by the second sentence, this latter language then states that such non-temporary employees get only certain benefits (there is no reference to wages) and the parties shall meet and confer about their status. In other words, first sentence states that temporary do not include those working more than 20 hours a week or more than 9 months, but the second sentence states that these employees even though they are not temporary, get only limited fringes.

Reading this language along with the other definitions in Section 1, the fact finder returns to the conclusion that the Employer's interpretation creates numerous ambiguities or it is simply incorrect. The Employer's interpretation is that if a position is not budgeted the employee doing the work in that unbudgeted position is outside of the agreement. I find this interpretation to be in conflict with Article 1, Section 3, which excludes "temporary" as

defined in the Iowa Code.¹⁶ That language should not be read as permitting the Employer to unilaterally affix the temporary employee exclusion upon anyone whose position is not mentioned in the budget regardless of the length of their employment or the existence of the position they are filling.¹⁷ That permits the Employer to simply gerrymand the bargaining unit by refusing to "authorize" specific jobs which are being performed and have been performed for extensive periods of time. This is precisely what the Employer has done in the library. It has created de facto permanent positions but has ritualistically refused to budget these positions, although obviously the employees are paid from budgeted funds. If that is what the language means, then it must be changed. This is supported by the comparables and by the economics of this fact finding report.

The following language is recommended:

"ARTICLE 7

"Section 1 - Definitions

"Temporary Employees - All employees regularly assigned less than ten (10) hours per week or who work in a position authorized for less than seven (7) months shall be temporary employees. All employees regularly assigned to ten (10) hours per week or more shall become permanent employees entitled to wages and benefits

¹⁶ The categories of seasonal and casual employees are not really at issue. No one is suggesting that they be included if they are truly casual or seasonal. Indeed, their being listed in the definition section only confuses matter inasmuch as truly seasonal or casual employees are, by common definition, "temporary" employees. The only basis for defining them in Section 1 is because the definition of temporary is so forced and artificial.

¹⁷ Given the number of names of persons who served for extended periods of time but are no longer employed, it is clear that many of these positions have been in existence for many years and have been held by a variety of employees who have come and gone.

as provided in this agreement upon the completion of seven (7) continuous months of employment.

Permanent Employees - Permanent employees shall be as follows:

(A) Those persons who are appointed to authorized budgeted positions and who have completed a probationary period upon initial employment with the City, or

(B) Those persons who were temporary employees regularly assigned to ten (10) hours per week or more who have completed seven (7) months of continuous employment.

The City shall provide the Union a list of names of all persons employed by the City, regardless of their status as employees, along with hire dates, termination dates (if applicable), and account number, except those persons excluded in Article 1, Section 3, of this Agreement.¹⁸

Section 2 - Regular Work Week

[Same as expiring agreement.]

Section 3 - Scheduling

[Same as expiring agreement.]

¹⁸ This language is intended to divide all employees into two categories, temporary and permanent. This is consistent with the Recognition provisions of Article 1. There is no reason to refer to seasonal, casual or student employees. Their coverage is defined by statute. A temporary employee may become a permanent employee if he/she is regularly assigned at least ten (10) hours per week for at least seven (7) consecutive months. Persons employed for less than 10 hours per week have only superficial connections with the workplace and are never entitled to coverage under the agreement. However, once a person who works at least 10 hours a week for seven (7) continuous months his/her employment becomes *de facto* permanent. A permanent employee is entitled to the wage rates and benefits provided in the agreement, except, as delineated in Section 4, part-time permanent employees get prorated benefits.

Section 4 - Part Time Employees

(A) Part-time employees are those persons regularly assigned to less than forty (40) hours of work per week. Benefits shall be prorated for permanent part-time employees in accordance with their regularly assigned hours per week. Occasionally the hours actually worked will vary from the assigned number. No minimum amount of work is guaranteed to part time employees. Any employee whose hours actually exceed his/her assigned hours shall be reassigned hours for the purpose of proration of benefits. An employee may request a redetermination of his/her assigned hours of proration of benefits through the grievance procedure. Nothing in this section shall require a regular part time employee to regularly work more than his/her assigned hours.¹⁹

B. Temporary Employees. All temporary employees, as defined in Section 1, above, and all other employees of the Employer are not entitled to any benefits or other provisions of this Agreement.

C. Current employees will have bidding preference for job vacancies over volunteer helpers and volunteer time will not count towards seniority.²⁰

4. Sick Leave

A. Sick Leave Bank

Article 11 of the current agreement provides that employees earn one day of sick leave credit per month and may accumulate unused sick leave to a maximum of 180 days. Once

¹⁹ This language reinforces the idea that a part-time employee becomes a permanent employee in the same manner as a full-time employee. Permanent part-time employees are paid the same wage rates as full-time employees doing the same work. Benefits are prorated.

²⁰ This is the former Section D. The former Section C has been deleted. It is the fact finder's intention that special program employees fit within the definition of temporary employees. In other words, special program employees working ten (10) hours per week or more and employed for more seven (7) continuous months or more are covered by the Agreement as any other employee. The parties can of course provide for special cases on an *ad hoc* basis.

employees reach the maximum any sick leave they might have earned but for the cap is credited to a sick leave bank. Employees whose sick leave accrual has capped out have no special proprietary interest in the sick leave bank credits. They are used as a yardstick for the contribution obligations by the Employer. The sick leave bank is available to all permanent employees who have exhausted their individual sick leave accounts. No individual employee may draw more than ten (10) days from the sick leave bank during the term of the agreement. All leave withdrawn from the bank must be repaid from future credits earned once the employee returns to work. Employees who do not return to work have a financial liability and must make other arrangements for repayment.

The Union is seeking two changes. It wants to remove the 10 day cap and it wants to eliminate the repayment obligation. It's primary argument appears to be that these restrictions are onerous and at least one employee with serious medical needs reached the 10 day maximum and would have benefitted from additional days. According to the Union this employee ended up in such financial straits that a fund raiser was held on her behalf. The Employer's response is that the changes are unnecessary and that there is a sick bank committee which should address these problems first before it is brought to fact finding.

The Union expresses concern regarding the Employer's failure to keep track of the number of days of sick leave it has contributed to the bank over the years. While this might have some symbolic significance it is not a substantive problem because these are not days "deposited" by employees. No employee is giving up anything in return for eligibility to take time from the sick leave bank. The days deposited are days which the Employer would

otherwise not be required to expend. Inasmuch as so few days have been drawn from the bank it is unlikely that the bank "balance" could possibly be overdrawn.²¹ Additionally, all days drawn must be repaid. For employees already under economic pressure due to a long illness this can be a burden. It might appear to be better to skip the extra paid sick days and avoid the liability. As a result, the days on deposit far exceed any present need to insure against "a run on the bank." Moreover, actual maintenance of a bank balance of unused sick days which are not apt to ever be used could create an accounting problem for the Employer.

A review of the comparables indicates that different municipalities have a variety of plans. In several, employees actually deposit some of their own hours in order to be eligible for withdrawals from the bank. In other instances employees may be able to contribute some of their own accrued sick leave to other employees. All of these ideas need to be thoroughly explored. The fact finder does not find that this is a subject which is ripe for outside intervention at this time.

B. Use of Sick Leave

Section 2(a) of Article 11 provides that sick leave may be used when an employee is sick and off work during a work week. It further provides that sick leave may be used "on an hour-to-hour basis for doctor's appointments or other health maintenance needs." The

²¹ There are 10 employees who have reached the sick leave accrual maximum. This means that the Employer is currently depositing 120 days, or 960 hours, of sick leave credits into the bank in this year alone. However, since the sick leave bank was established in 1975 only 506 hours have been drawn from the bank.

Employer seeks to change this language so that the hourly use of sick leave is limited to doctor's appointments "of the employee." It also wants new language requiring employees to "attempt to schedule such appointments" not during working hours. The Employer offered no data or other evidence indicating that the present language has been a problem. The Union argues that it has not been a problem and that no supervisor has complained about the abuse of the present provisions.

A review of the provisions among the comparable municipalities shows as many different arrangements as there are bargaining units. Nonetheless, the consensus clearly permits time off during working hours for doctor's appointments for the employee and for family members. Additionally, the language of Section 2(b) of the Sick Leave article recognizes that sick leave may be used for the serious illness of a family or household members when "the employee's presence and efforts are needed." Simply stated, there is no basis for the fact finder to recommend the changes sought by the Employer on this issue.

5. Representation

Article 20 of the current agreement provides that stewards engaged in grievance resolution "shall be released from work for not more than two (2) hours in one work week." The Union argues that this is insufficient time because of the size and breadth of the bargaining unit. It maintains that the current local president, a bus driver, is unable to be available within the limited period the current contract provides. Union officials have been forced to use personal time in order to fulfill their responsibilities. Additionally, computation

errors are made and unnecessary time is wasted in resolving disputes as to which hours were being used for grievance resolution. The Union seeks a "reasonable amount of time" for grievance resolution instead of the two hour limit.

The comparables strongly support the Union's position. None of the comparables have the two hour limitation. Most allow a "reasonable period." The Union president explained at the fact finding hearing about the need to be present and his inability to get to grievance meetings. The Union claims that the use of the grievance procedure has not been abused. The Employer does not suggest otherwise. The Employer has offered no alternative although there was some indication at the hearing that it would be willing to look into the issue.

Based upon the demonstrated need, the City's failure to offer any substantive changes, and the strong support of the comparable cities, the fact finder recommends that in addition to the current two hour limit for stewards, the president of the local be allowed the "reasonable time" period he seeks. Accordingly, it is recommended that the third paragraph of Article 20, Section 2, read as follows:

The City will compensate not more than one employee steward for the investigation of a grievance. If a second City employee has a special office in the Union handling grievances, that employee may request released time from his/her supervisor, and permission to work on the grievance will not be unreasonably withheld, but the City will not provide compensation for time spent. Any stewards who are City employees shall be released from work for not more than two (2) hours in one work week to work on grievance resolution. The employee will obtain permission from the immediate supervisor before investigating the grievance, but such permission will not be unreasonably withheld. Released time under this section is limited to grievance resolution. **Notwithstanding any of the above, the Union President shall be released from work without loss of pay for a reasonable amount of time during any work week to work on grievance resolution.**

6. Holidays

Article 9, Section 6, provides that permanent full-time employees who are assigned to work on holidays will receive 12 hours of holiday credit during the pay period in which the holiday occurs. Part-time employees get prorated holiday credit. The Employer represents that this language has been interpreted to mean that employees are getting 12 hours of holiday credit even if they are not required to work the full day. The Employer seeks changes in the language so that it is clear that holiday credit for employees working on a holiday is earned at the rate "equal to one and one-half (1-1/2) times the hours actually worked." It also seeks to make some technical changes in wording to conform to the intent of the language.²²

The Union argues in opposition to this request. It points out that most of the comparable bargaining units already receive more generous allowances for work performed on holidays. Therefore, the Union sees any further restrictions as unfair and unwarranted.

The Employer is not seeking a substantive restriction in benefits. It wants to clarify what it believes the original intent of the language was, to provide employees with the same holiday hours (at holiday pay rates) they would have received had they not been scheduled to work on a holiday. Under the current language, the Employer maintains, employees

²² The City's proposal is as follows:

Section 6. Permanent ~~full-time~~ employees who are assigned to work on holidays when City operations to which they are assigned are operating or open to the public will receive ~~twelve (12) hours of holiday credit equal to one and one-half (1-1/2) times the hours actually worked. During the pay period in which the holiday occurs. Holiday credit will be prorated for part-time employees.~~ This credit may be used after the holiday occurs but must be taken before the next succeeding July 1. ***

working four hours on a holiday would receive 12 hours of holiday credit instead of six. Its proposal would limit the holiday credit to time and a half of hours actually worked.

The Union's objection to what appears to be a "housekeeping" correction is unclear to the fact finder. While it is true that most employees in other units get extra pay for working holidays and not compensatory time, there is no indication from the Union's exhibit that these other employees get additional pay for time not worked. An employee who gets time and one-half for working on a holiday plus pay for the holiday, is not necessarily getting the time and one-half for hours not actually worked. There may be differences in form, but substantively the Employer's proposal seems fair and justified.

The Employer's proposal is recommended.

RECOMMENDATIONS

1. Wages

The fact finder recommends a 3% increase across the board in wages.

2. Insurance

The fact finder recommends an increase in family premium contributions to \$35.00 a month for the first six (6) months and \$40.00 for the second six (6) months of the one year term of the new agreement.

3. Hours of Work

The fact finder recommends the following new language for Article 7:

"ARTICLE 7

"Section 1 - Definitions

" Temporary Employees - All employees regularly assigned less than ten (10) hours per week or who work in a position authorized for less than seven (7) months shall be temporary employees. All employees regularly assigned to ten (10) hours per week or more shall become permanent employees entitled to wages and benefits as provided in this agreement upon the completion of seven (7) continuous months of employment.

Permanent Employees - Permanent employees shall be as follows:

(A) Those persons who are appointed to authorized budgeted positions and who have completed a probationary period upon initial employment with the City, or

(B) Those persons who were temporary employees regularly assigned to ten (10) hours per week or more who have completed seven (7) months of continuous employment.

The City shall provide the Union a list of names of all persons employed by the City, regardless of their status as employees, along with hire dates, termination dates (if applicable), and account number, except those persons excluded in Article 1, Section 3, of this Agreement.

Section 2 - Regular Work Week

[Same as expiring agreement.]

Section 3 - Scheduling

[Same as expiring agreement.]

Section 4 - Part Time Employees

(A) Part-time employees are those persons regularly assigned to less than forty (40) hours of work per week. Benefits shall be prorated for permanent part-time employees in accordance with their regularly assigned hours per week. Occasionally the hours actually worked will vary from the assigned number. No minimum amount of work is guaranteed to part time employees. Any employee whose hours actually exceed his/her assigned hours shall be reassigned hours for the purpose of proration of benefits. An employee may request a redetermination of his/her assigned hours of proration of benefits through the grievance procedure. Nothing in this section shall require a regular part time employee to regularly work more than his/her assigned hours.

B. Temporary Employees. All temporary employees, as defined in Section 1, above, and all other employees of the Employer are not entitled to any benefits or other provisions of this Agreement.

C. Current employees will have bidding preference for job vacancies over volunteer helpers and volunteer time will not count towards seniority.

4. Sick Leave

A. The fact finder recommends no change in the provisions for the sick leave bank.

B. The fact finder recommends no change in the provisions for the sick leave usage.

5. Representation

The fact finder recommends that the following language be appended to Article 20, Section 2, third paragraph:

Notwithstanding any of the above, the Union President shall be released from work without loss of pay for a reasonable amount of time during any work week to work on grievance resolution.

6. Holidays

The fact finder recommends the Employer's proposed changes to the language of Article 9, Section 6.

Respectfully submitted,


HARVEY A. NATHAN

February 28, 2003

CERTIFICATE OF SERVICE

I certify that on the 28 day of February, 2003, I served the foregoing Report of Fact Finder upon each of the parties to this matter by ~~xxxxxxxxxxxx personally xxxdel xxxxxx~~ (xxxxxxxxxxxx mailing) a copy to them at their respective addresses as shown below:

Steven Rynecki, 411 East Wisconsin Ave, Milwaukee, WI

Ty Cutkomp, 33 Oak Lane, Davenport, IA

I further certify that on the 28 day of February, 2003
_____, ~~XXXXXX~~ report for filing by _____ personally
~~or~~ (_____ mailing) it to the Iowa Public Employment
Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Harvey A. Nathan

(Print name)

_Fact-Finder

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